

**FINAL MINUTES  
OF THE PUBLIC MEETING  
OF THE BOARD OF OPTOMETRY**

**April 16, 2004**

1. Call to Order

The meeting was called to order at 9:32 a.m. by Dr. Hernandez. Present were Ms. Noda, Mr. De La Cruz, and Drs. Goldstein, Hernandez, Kame, Pollack, Yarwood and Yu. Also present were Staff Members Rex Farmer, Jane Flint, and Taryn Smith, Staff Counsel Don Chang, and the Board's Liaison to the Attorney General's Office, Char Sachson.
2. Approval of Minutes

**Move to approve the minutes of the January 16, 2004 meeting as corrected. M – Goldstein, S – Yu, MSP, unanimous.**
3. Election of Officers

The election of officers was tabled until Ms. Rosas' arrival.

**Move that all current officers of the Board be re-elected. M - Goldstein, S – Kame, MSP, unanimous.**
4. Finance Committee Report

Ms. Smith presented the Finance Committee Report. The Board fund is projected to be insolvent in August 2006. Preliminary discussion with representatives from the Schwarzenegger Administration indicates that the Administration is not inclined to support a fee increase this Legislative session. The Board President and Executive Officer are scheduled to meet with the Director of the Department of Consumer Affairs to discuss this and other Board related issues on April 19, 2004.

In the event a fee bill is not signed into law as a result of the 2004/05 session, two potential alternatives have been identified as follows:

- Seek urgency legislation in the 2005/06 legislative session to be effective upon signature
- Pursue a loan from another program to keep the fund solvent

## 5. Enforcement Committee Report

The Enforcement Committee met on April 15, 2004 to review and make recommendations for revisions to the Probation Monitoring Guidelines and to establish criteria for the recruitment and selection process of expert witnesses. Although the Committee did not complete the agenda items as planned, there was discussion concerning the processing of complaints, investigations, disciplinary cases, monitoring of probationers and the associated costs. Staff was directed to improve the Probation Monitoring Program and reduce costs.

## 6. EO Report

Ms. Smith highlighted the following items from the Executive Officer's Report:

- Licensing program
- Contact Lens Prescription Release Law
- Public Outreach
- Coordination with Department of Health Services (DHS)
- Strategic Planning
- Pending Litigation
- Governor's Executive Order S-2-03
- Budget
- AB 320 (Correa)

Mr. Naranjo arrived at 10:50 a.m.

## 7. Strategic Planning

**Move to adopt the Strategic Plan as amended. M – Goldstein, S – Yu, MSP, unanimous.**

## 8. Regulations

On November 19, 2003, the Board held regulatory hearings and the public comment period closed for five proposed regulatory changes. The

Board reviewed the comments and considered the following:

Amend CCR Sections 1523 and 1524 to incorporate by reference a revised application form and reduce the application fee.

The COA supports this regulatory amendment.

**Move to rescind the proposal to amend CCR 1523 & 1524 and re-affirm the \$275.00 application fee. M – Goldstein, S – Naranjo, MSP, unanimous.**

Amend CCR Section 1536 to reflect continuing education requirements necessary in response to the change in the license renewal cycle from annual to biennial. The change also provided one for one credit for self-study.

The COA supports this regulatory amendment.

**Move to adopt the modified text of the proposal to amend CCR Section 1536 and direct staff to issue the 15-day notice of Modified language to interested parties. M – Yu, S – Goldstein, MSP, unanimous.**

Amend CCR Sections 1566 and 1566.1 to update existing consumer notice to include statutory requirements regarding release of prescriptions.

The COA opposes this regulatory amendment. Describing it as an “excessive” requirement that will cause consumer confusion and in the past, has lead to a “disproportionate amount of unfounded complaints” filed with the Board.

The University of San Diego’s Center for Public Interest Law supports this regulatory amendment and encourages

the Board to petition the Medical Board of California to adopt its own consumer notice.

The California Association of Dispensing Opticians proposed that “immediately” be placed before the phrase “upon completion of an eye examination” as this word is provided in that context with cited Federal Trade Commission regulations.

EyeMed, Inc (dba EYEXAM of California) states that the Board fails to recognize an optometrist’s right to receive payment for services rendered. They offered amended notice language directing that prescriptions will be provided upon completion of and payment for an eye examination and addressing a doctor’s right of refusal to provide a prescription relative to payment for services rendered.

**Move to adopt proposed language regarding CCR Sections 1566 & 1566.1 Consumer Notice Regarding Prescription Release. M —Goldstein, S – DeLaCruz, MSP, unanimous.**

Amend CCR Sections 1567, 1568 and 1569 to incorporate statutory language in Senate Bill 919(Statutes of 2000, Chapter. 676) regarding Therapeutic Pharmaceutical Agents (TPA).

The COA supports this regulatory amendment while bringing to the Board’s attention the need to correct technical errors (i.e. misspellings and duplicate language).

The California Academy of Ophthalmology (CAO) opposes the regulatory amendment based on their interpretation of Senate Bill 929 which they believe directs that the Board must first promulgate regulations that provide standards for the glaucoma certificate approval process prior to the

incorporation scope of practice changes into the CCR.

**Move to adopt proposed language regarding CCR Sections 1567, 1568 7 1569 Therapeutic Pharmaceutical Agents. M – Goldstein, S – Yu, MSP, unanimous.**

Adopt CCR Section 1571 to incorporate by reference the “Request for Approval to Perform Lacrimal Irrigation and Dilation Procedures” form.

The COA supports this regulatory amendment.

**Move to adopt proposed language regarding CCR Section 1571 Lacrimal Irrigation & Dilation. M – Goldstein, S – Pollack, MSP, unanimous.**

## 9. Legislation

The House of Representatives introduced HR 3473, the Veterans Eye Treatment Safety Act of 2003, to provide that only licensed medical doctors and licensed doctors of osteopathy may perform eye surgery at the Department of Veterans Affairs facilities or under contract with the Department of Veterans Affairs.

**Move to oppose Federal Legislation H.R. 3473, the Veterans Eye Treatment Safety Act of 2003. M – Goldstein, S – Yu, MSP, unanimous.**

As currently drafted, SB 136 reflects changes in examinations given by the Board of Behavioral Sciences and the fees associated with those examinations. However, Senator Figueroa's staff indicate that this omnibus bill will be amended to extend the Board of Optometry sunset date from January 1, 2007 to January 1, 2009. This bill would declare that it is to take effect immediately as an urgency statute.

**Move to support Senate Bill 136 (Figueroa), Marriage and family therapists: clinical social workers: examinations if amended to extent the Board's sunset review date to 6 years. M – Goldstein, S – Naranjo, MSP, unanimous.**

Senator Figueroa introduced Senate Bill 1735, which existing law provides for the establishment and funding various boards under the jurisdiction of the department of Consumer Affairs, and establishes the Division of Investigation in the department.

Existing law requires, with certain exceptions, the controller to abolish any state position that is vacant for 6 monthly pay periods. The Director of Finance may authorize the reestablishment of any positions abolished by the Controller pursuant to these provisions under specified conditions.

This bill would exempt from the provisions requiring the abolishment of vacant positions any position on any board under the jurisdiction of the Department of Consumer Affairs that is funded solely from non-General Fund sources, or in the Division of Investigation in the department. It would provide that any position on a board under the jurisdiction of the department, or in the division, that was abolished pursuant to these provisions prior to January 1, 2004, shall be reestablished by the Director of Consumer Affairs to the extent that non-General Fund moneys are available for that purpose. It would also require the Director of consumer Affairs to provide to the Legislature information on all staff and appointment vacancies for boards under the jurisdiction of the department, and the division, within 30 days of receiving the Legislature's request for that information.

The bill would prohibit the Director of Finance from refusing to authorize the filling of a vacancy in any staff position on a board under the jurisdiction of the department or in the division unless the Director of Finance has made a finding based upon substantial evidence that there are insufficient non-General Fund resources to fill the position.

This bill would specify that the provisions of specified executive orders of the Governor with respect to the hiring of state employees shall not apply to any board under the jurisdiction of the department of Consumer Affairs or to the Division of Investigation within the department. This bill would prohibit non-General Fund moneys deposited in any fund supporting a board under the jurisdiction of the Department of Consumer Affairs from being loaned to, or being used to secure a loan to, the General Fund. It would require the Director of Finance to provide a schedule for all loans of funds supporting boards under the jurisdiction of the department of Consumer Affairs to the general Fund, which are required to be repaid in full.

**Move to support Senate Bill 1735 (Figueroa) Boards: Department of Consumer Affairs. M – Yu, S – Naranjo, MSP, unanimous.**

Assembly member Cohn introduced SB1927, sponsored by the California Optometric Association, provides for the licensure and regulation of health care service plans by the Department of managed Care, and makes a violation of the act a crime. Under existing law, a plan may provide for coverage of, or exclusion or, vision care services, and prohibits a plan from prohibiting a member from selecting an optometrist for vision care services.

This bill would instead require a plan that offers vision care benefits to contract with both optometrists and physicians and surgeons. The bill would prohibit a plan that provides for coverage of vision care services from discriminating against or refusing to contract with a clinic that provides vision care services, and would make a plan that violates that provision ineligible for any contract or to receive any funds under the Healthy Families or Medi-Cal Programs.

**Move to support Assembly Bill 1927 (Cohn), Vision Care Benefits. M – Goldstein, S – Naranjo, MSP, unanimous.**

10. Educational Equivalency of Foreign Graduates Applying for Licensure

At the November 2003 meeting staff was directed to refer graduates of foreign schools of optometry to credential evaluation services in order to determine educational equivalency before the Board would consider sponsorship to sit for the NBEA examination. The Board was provided with Mala Chopra's Credential Evaluation Report prepared by World Education Services, Inc., for review and determination if the education is equivalent to that which is required for a California license to practice optometry. The matter was tabled until additional information regarding Ms. Chopra's education was provided.

Additional educational and background information was provided by Center for Applied Research, Evaluation & Education, Inc. at the Boards request to assist them in identifying the different credential evaluation reports produced by NACES agencies.

**Move to sponsor Ms. Chopra to sit for the NBEA examination. M – Naranjo, S – Goldstein, MSP, unanimous.**



**Move to continue request for sponsorship of Nemat Afvari until additional general and course by course evaluation information is available. M – Goldstein, S – Naranjo, unanimous.**

Staff was instructed to compile data and propose protocols for future applicants.

Ms. Rosas arrived at 1:30 p.m.

#### 11. Administrative Procedure Manual

The Board reviewed the Administrative Procedure Manual at the January 16, 2003 meeting and made a number of edits. Those edits were incorporated into a revised manual. The following two additional edits were made in response to input received at the Board's last strategic planning session:

- Clarifying language regarding representing the Board and it's policy
- Clarifying language regarding Board member intervention on behalf of applicants, candidates and licensees.

**Move to amend the Administrative Procedures Manual as recommended. M – Goldstein, S – Naranjo, MSP, unanimous.**

#### 12. Proposed Changes to Business and Professions Code (B&P) Chapter 7

Suggested amendments to Business and professions Code, Chapter 7, were drafted with assistance from the Board President, legal counsel and staff. The proposed amendments were for the following Articles:

- 1- General Provisions;
- 2- Administration;
- 3- Admission to Practice; and
- 4- Registration

AB 2464 (Pacheco) is available to the Board as a vehicle. In order to get the bill out of committee, amendments to the following sections were provided to

the author on April 7, 2004: 3013, 3014, 3016, 3018, 3019, 3020 & 3022. The author has agreed to accept additional non-controversial amendments with the approval of the Board.

**Move to adopt proposed changes to the B&P Code as amendments to AB2464 as follows:**

- **Revise B&P Section 3000**
- **Add B&P Section 3003**
- **Add B&P Section 3004**
- **Add B&P Section 3005**
- **Add B&P Section 3006**
- **Delete B&P Section 3012**
- **Amend B&P Section 3013**
- **Amend B&P Section 3014**
- **Amend B&P Section 3016**
- **Amend B&P Section 3017**
- **Amend B&P Section 3018**
- **Amend B&P Section 3019**
- **Delete B&P Section 3020**
- **Delete B&P Section 3021**
- **Delete B&P Section 3022**
- **Amend B&P Section 3023**
- **Delete B&P Section 3023.1**
- **Add B&P Section 3025.1**
- **Add B&P Section 3025.2**
- **Add B&P Section 3025.7**
- **Add B&P Section 3026.5**
- **Amend B&P Section 3027**
- **Delete B&P Section 3027.5**
- **Delete B&P Section 3029**

**M – Rosas, S – Goldstein, MSP, unanimous.**

**Move to adopt proposed changes to the B&P Code as amendments to AB2464 as follows:**

- **Amend B&P Section 3040**
- **Amend B&P Section 3042**
- **Amend B&P Section 3043**
- **Amend B&P Section 3044**
- **Amend B&P Section 3045**
- **Add B&P Section 3046**
- **Delete B&P Section 3047**

- Delete B&P Section 3050
- Delete B&P Section 3052
- Amend B&P Section 3054
- Amend B&P Section 3055

**M – Goldstein, S – Naranjo, MSP,  
unanimous.**

**Move to adopt proposed change to  
the B&P Code as amendments to  
AB2464 as follows:**

- Amend B&P Section 3056

**M – Naranjo, S – Pollack, MSP,  
unanimous.**

**Move to adopt proposed changes to  
the B&P Code as amendments to  
AB2464 as follows:**

- Amend B&P Section 3059

**M – Goldstein, S – Yu, MSP,  
unanimous.**

**Move to adopt proposed changes to  
the B&P Code as amendments to  
AB2464 as follows:**

- Amend B&P Section 3070
- Add B&P Section 3071
- Add B&P Section 3072
- Amend B&P Section 3075
- Amend B&P Section 3076

**M – Goldstein, S – Naranjo, MSP,  
unanimous.**

**Move to adopt proposed change to  
the B&P Code as amendments to  
AB2464 as follows:**

- Amend B&P Section 3077

**Dr. Goldstein spoke against the motion.**

**M – Naranjo, S – Hernandez, MSF,  
Second Withdrawn**

Discussion

It was agreed that interested parties would be invited to the next 2 Board meetings for further discussion concerning the proposed amendment to B&P 3077.

13. Public Comment

None

14. New Business

It was agreed that the following items would be future agenda items:

- Branch Office discussion
- Executive Officer Evaluation
- Glaucoma Certification (B&P 3041)
- Co-management
- Alternatives to 50 patient co-management requirement

15. Enforcement Actions

The Board convened into closed session.

**The Board voted to not adopt the Proposed Decision the Matter of the Accusation Against Bert L. McCoy, O. D.**

16. Open Session

The Board convened into open session.

17. Adjournment

The meeting adjourned at 4:00 p.m.

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Page A. Yarwood, O. D., M. S., F.A.A.O.  
Secretary